

REMARKS/ARGUMENTS

Favorable reconsideration of this application as presently amended and in light of the following discussion is respectfully requested.

Claims 1, 2 and 5-7 are presently active in this case, Claims 1 and 2 having been amended, Claims 3 and 4 canceled and Claims 5-7 added by the present amendment.

In the outstanding Office Action, the disclosure was objected to as including informalities requiring correction. Claims 2-4 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite. Claims 1-4 were further rejected under 35 U.S.C. §102(b) as being anticipated by Itonaga et al. (EPA 1,178,471 A2, hereinafter called "Itonaga"); and Claims 1-4 were further rejected under 35 U.S.C. §102(b) as being anticipated by Torazawa et al. (U.S. Patent 6,339,571, hereinafter called "Torazawa").

In response to the objection to the specification, the offending paragraphs at page 4 of the specification have been deleted and replaced with paragraphs stating the subject matter of newly submitted Claims 5-7.

In response to the Office Communication of March 3, 2008, we hereby submit an Amendment to the specification with markings for comparison to replace the non-compliant Amendment filed on August 9, 2007. Therefore, we believe this Amendment to be in compliance with 37 C.F.R. § 1.121, and respectfully request consideration of this Amendment.

In response to the several grounds for rejection, Claims 1 and 2 have been amended to clarify the claimed invention, and Claims 3 and 4 have been canceled and replaced by new Claims 5-7. In the amended and newly submitted claims, "RIM intensity" has been defined as "a relationship between a numerical aperture of the objective lens and an intensity distribution of the lightbeam," for example as described in the specification at page 8, lines 16-19. Similar definitions have been stated in Claims 6-7. No new matter has been added by

the present amendment, and in light of the amended and newly submitted claims, the pending claims are believed to in compliance with 35 U.S.C. §112, second paragraph, and patentably distinguishing over the Itonaga and Torazawa references.

In particular, neither Itonaga nor Torazawa discloses any conditions of the position on a disk where RIM intensity is recorded. Further, neither Itonaga nor Torazawa teaches or suggests recording the RIM intensity in a position where it is reproduced in advance of data of the read power for non-recording use and non-erasing use. On the contrary, Torazawa merely discloses a table of contents (TOC) as an example of information to be recorded in the disk. It is respectfully submitted that Torazawa's disclosure of a table of contents is not relevant to the claimed invention defined by Claims 1, 2, 6 and 7 and in no way anticipates or renders the subject matter recited in theses claims.

Likewise, neither Itonaga nor Torazawa discloses or renders obvious the subject matter of Claim 5, which states in part,

...a program retaining device in which a control program for reading out information concerning intensity of the light beam for recording the information on the recording medium, reproducing the information from the recording medium, or erasing the information recorded in the recording medium is recorded in a recording region preceding the region in which information showing laser power for reading is recorded, the information being defined by a focal distance of the collimating lens, a wavelength and a spread angle of the light beam from the light source, and a numerical aperture NA and the focal distance of the objective lens;

Accordingly, Claim 5 is likewise believed to be patentably distinguishing over Itonaga and Torazawa.

Consequently, in view of the present amendment, and in light of the above discussion, it is respectfully submitted that amended Claims 1 and 2 and newly submitted Claims 5-7 are in condition for allowance, and an early and favorable action to that effect is respectfully requested.

Respectfully submitted,

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